IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

Writ Petition No. 13349 of 1995

Between :

Banoath Samla and another .. Petitioners

And

State of Andhra Pradesh rep. by
Its Special Secretary to Government,
Social Welfare Department, Secretariat,
Hyderabad and others .. Respondents

Dated : 07th June, 2006

JUDGMENT :

The petitioners belong to a community called `Lambada'. They purchased an extent of Ac.4.16 gts and 2.10 gts respectively in a village called Kawal, Jannaram Mandal, Adilabad District sometime in the year 1985. On 16.11.1992, the 3rd respondent *suo* motu issued a notice purporting to be one under A.P.Scheduled Areas (Land Transfer) Regulations, 1970 calling upon the petitioners to show-cause as to why they should not be evicted from the above described lands on the ground that the lands purchased by them is in contravention of the above mentioned regulation. After the service of the notice, the respondents filed their objections and personal hearing was granted, evidence was taken and an order dated 28.3.1995 came to be passed holding that the purchase by the petitioners of the above mentioned property is in contravention of the above referred regulation

and consequentially they are required to be evicted from the lands. Aggrieved by the same, the present writ petition is filed.

The case of the petitioners is that that the petitioners are `Lambadas' which is one of the Scheduled Tribes notified under `The Constitution (SCHEDULED TRIBES) ORDER, 1950 in exercise of the power under Article 342(1) of the Constitution of India. Article 342(1) enables the President to specify the tribe or tribal communities or parts of or groups within tribes and tribal communities which shall for the purposes of the Constitution be deemed to be Scheduled Tribes in relation to a specified State or Union Territory as the case may be. Sub-Article (2) authorizes the Parliament to include in or exclude from the list of Scheduled Tribes notified by the President under Article 342(1). The order issued under Article 342(1) in the year 1950 insofar as it relates to Andhra Pradesh did not specify `Lambadas' to be a Scheduled Tribe with respect to the State of Andhra Pradesh or any part thereof. However, in exercise of the power under sub-Article (2), the Parliament made an enactment in the year 1977 known as `The Scheduled Castes & Scheduled Tribes Orders (Amdt.) Act, 1976 (Act 108 of 1976) by which certain amendments were made to the order issued by the President in the year 1950. Relevant in the context of the present case is that insofar as the State of Andhra Pradesh is concerned, the list was amended by including Sugalis, Lambadis in the list of Scheduled Tribes in the State of Andhra Pradesh. The case of the petitioners is that by the date of the purchase of the land in issue by each of the petitioners, the community to which they belonged i.e., `Lambadis' community was declared under law made by the Parliament to be a Scheduled Tribe in the Territory of Andhra Pradesh and therefore there was no illegality in their acquiring the land in the Scheduled Areas of the State of Andhra Pradesh.

Scheduled Areas in the State of Andhra Pradesh are governed by Article 244§ read with V Schedule of the Constitution. Para 5 of the Fifth Schedule authorizes the Governor to make regulations for the peace and good government of any area of the State which is for the time being a Scheduled Area. The Constitution more specifically authorizes the Governor to make regulations in the following matters :

> "In particular and without prejudice to the generality of the foregoing power, such regulations may –
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> (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
>
> (b) regulate the allotment of land to members of the Scheduled Tribes in such area
>
> (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area."

The property in question is undisputedly in an area which is declared to be a `Scheduled Area'. The Governor of Andhra Pradesh in exercise of the power under para 5 of the Fifth Schedule made Regulation No.1 of 1959 called `The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959. Para 3 of the said regulation prohibits absolutely any transfer of immoveable property situated in the `agency tracts' (a defined expression under para 2(a)[1] of the said Regulation) unless such transfer is in favour of a person who is a Member of the Scheduled Tribe or a society registered under the Andhra Pradesh Cooperative Societies Act which is composed solely of members of the Scheduled Tribes.

By the date of the purchase of the property in dispute,

the petitioners, as already demonstrated belong to a community which was recognized by the law to be a `Scheduled Tribe' within the State of Andhra Pradesh in which case there cannot be any legal objection based on para 3 of the Land Transfer Regulation referred to above.

However, the respondent No.3 refers to a government order in G.O.Ms.No. 80, dated 9.4.1985 in support of the conclusion to evict the petitioners. The said government order simply purports to withdraw the orders issued earlier by the Government of Andhra Pradesh in G.O.Ms.No.130, dated 12.5.1978 on the ground that the said order is not in consonance with the Land Transfer Regulations, referred to above.

The operative portion of G.O.Ms.No.130 reads as follows :

> "6. The following orders are accordingly issued.
>
> (i) In view of the fact that Lambadas, Yerukulas and Yenadis are part of Scheduled Tribes with effect from 27th July, 1977 and thereby eligible for the protection under the protective enactments and keeping the administrative considerations in view, Government decided that the possession of the Yerukulas, Yenadis and Lambadas on Land in the Scheduled Areas of Adilabad, Warangal, Khammam and Mahabubnagar districts need not be disturbed under the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 in all cases where even though action has been initiated under the Land Transfer Regulation prior to 27th July, 1977, and is at various stages including appeal or revision if possession of the land continues to be with the Lambadas, Yerukulas or Yenadis.
>
> (ii) In respect of the cases pending in the High Court if any either filed by non-tribals or tribals further action shall be taken based on the orders of the High Court in such cases.

(iii) Where however the possession of the lands has already been restored to the Scheduled Tribes other than Lambadas, Yerukulas and Yenadis no further action is necessary or possible.

7. The Collectors of Adilabad, Warangal, Khammam and Mahabubnagar Districts are requested to take necessary action in the light of the above orders."

As it can be seen from the above extract, the order was issued in the background of the various pending proceedings under the Land Transfer Regulations against members of the communities called Yerukulas, Yenadis and Lambadas because prior to 27th July, 1977, when the Amendment Act 108/1976 came into force, these communities were not recognized as Scheduled Tribes and proceedings were initiated to evict the members of the above mentioned communities if they were in possession of the lands situated in the scheduled areas of the State of Andhra Pradesh.

In view of the amendment to the law and the recognition conferred on these communities as Scheduled Tribes in the State of Andhra Pradesh, the State of Andhra Pradesh thought it fit not to continue the proceedings of eviction initiated against various members of these communities. We do not know what are the reasons which prompted the State to issue G.O. Ms.No. 80, dated 9th April, 1985 by which the earlier G.O. Ms.No.130 was withdrawn, because G.O.Ms.No.80 does not give any details or the reasons which prompted such a decision.

But, in my view either the issuance of G.O.Ms.No.130 or the subsequent withdrawal of the same by G.O.Ms.No.80 makes no difference to the issue on hand. It as a matter of fact, the petitioners were members of the Scheduled Tribe recognized by law by the date

of the purchase of property in the scheduled area in the State of Andhra Pradesh. There is no law which prohibits them from acquiring such property. Its already noticed the provision under para 3 of the Land Transfer Regulation is against acquisition of a property by a non-tribal in the scheduled area. On this ground alone, the writ petition is required to be allowed. But, it is also felt necessary to advert to another aspect of the matter as the respondent took a stand in the counter that the government in Social Welfare Department issued a clarification dated 14.3.1986 to the effect that a person belonging to Lambada community of Maharashtra State and migrating to Adilabad District of Andhra Pradesh State cannot be treated as a member of Scheduled Tribe in the State of Andhra Pradesh. I do not propose to go into the legality or correctness of the understanding of the legal position as contained in the above mentioned Memorandum in this case. Suffice to say that even assuming that the understanding as contained in the above mentioned Memorandum is in tune with the scheme of the Constitution and the law, the basic fact that the petitioners are migrants from the State of Maharashtra is not supported by any evidence on record. Even in the counter affidavit filed in the present writ petition, there is no such categoric assertion that the petitioners are migrants from the State of Maharashtra. In the absence of any material on record, the petitioners cannot be evicted on the presumption that they are migrants from the State of Maharashtra. I hasten to add that the question whether immigrant from another State belonging to a particular community which is recognized to be a Scheduled Tribe in the State of Andhra Pradesh are entitled to be treated as Scheduled Tribes in the State of Andhra Pradesh or not, is not being decided in this case because it requires a more elaborate examination of the issue. Neither any pleading this behalf exists on

record nor any argument addressed on this issue in this matter.

In the result, the writ petition is allowed as prayed for.

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knk 07.06.2006

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§ **Part X – The Scheduled And Tribal Areas – 244. Administration of Scheduled Areas and Tribal Areas.-(1)** The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam, Meghalayaa, Tripura and Mizoram.

[1] **2. Definitions :-** In this Regulation, unless the context otherwise requires :- (a) `Agency tracts' means the Areas in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahaboob Nagar declared from time to time as Scheduled Areas by the President under sub-paragraph (1) of paragraph 6 of the Fifth Schedule to the Constitution.